IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 760 OF 2005

Satyendra Dudhnath Tiwari .. Applicant.

V/s.

The State of Maharashtra ..Respondent.

Shri A.G. Lalla i/by Lalla & Lalla for the Applicant.
Shri D.R.More, APP for Respondent -State.

CORAM : A.M.KHANWILKAR, J.
DATED : FEBRUARY 16, 2005

PC :-

. Heard counsel for the parties.

2. In this case, during the personal search of the applicant, recovery of 2 kgs Charas is made, which is indeed a commercial quantity, as under the notification 1 kg of charas is stated as commercial quantity. The same argument, which was canvassed in Criminal Application No. 693/2005, has been pressed into service in this application also, to contend that the certificate issued by the Directorate of Forensic Science Laboratories, it would suggest that the quantity possessed by the applicant was not commercial quantity. The certificate, as mentioned in the order

passed in the companion application, being Cri. Application No. 693/2005, only refers to the percentage of active ingredient of the Narcotic Drug in the samples and not the weight of contraband as such. Applying the reasons stated in the order passed in the companion application, even this application should fail.

3. Counsel for the applicant, however, places reliance on the decision of this court, as referred by the lower court in its order, in the case of Chandrakant Khare vs. State of Maharashtra, reported in 2004 (2) Bom. C.R. (Cri) 127, to contend that if the percentage is less of active ingredient, as low as 0.6, in such a case, liberal approach should be adopted for awarding sentence. However, that stage is yet to arrive in the present case as the trial is yet to be proceeded and if any conviction is recorded; whether that approach can be adopted and permissible, is a matter which will have to be considered at that stage only.

4. As there is evidence on record to indicate the complicity of the applicant in the commission of the crime, it is not possible for this court to hold that

there are reasonable grounds to believe that the applicant is not guilty of the offence. If it is so, the bar under section 37 of the Act will come into play, for which reason this application will have to be rejected. Hence, rejected.

5. As the prayer for bail has been rejected, the trial court is directed to expedite the hearing of the case as per its turn under caption of "High Court expedited cases". Needless to observe that the trial court will decide the case on its own merits in accordance with law, uninfluenced by the observations made in this order or in the order of the lower court, rejecting the application.

6. Ordered accordingly.

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